

Attachment A

Chapter 480-107 WAC

WAC 480-107-001 Purpose and scope.

(1) The rules in this chapter ~~establish the rules for various utility solicitations and procurement, including but not limited to when competitive solicitations are required, when all source RFPs and single source RFPs are preferred, when and what type of Commission filing to make for each and when an RFP requires an independent evaluator. require utilities to issue an all source RFP to fill the utilities' resource need with terms longer than five years in length, described in their integrated resource plans (IRP) or every four years and for any new or unfilled resource need identified in the IRP update, that is greater than 80 MW. The rules establish a set of requirements for each of the two required RFPs as well as any RFP issued by the utility to meet a resource need.~~ The rules in this chapter do not establish the sole procedures utilities may use to acquire new resources. Utilities may construct new resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

Commented [A1]: Recommend deletion. Could be read to require an RFP "every four years" regardless of whether there is a resource need or not

Commented [A2]: Unneeded language and confusing

(2) The commission will consider the information the utility obtained through its acquisition efforts when it evaluates the performance of the utility in rate and other proceedings.

-WAC 480-107-002 Application of rules.

(1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.01.040, RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

(3) Consistent with WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts with other rules), the commission may grant an exemption from the provisions of any rule in this chapter. ~~The Commission shall consider a request by an electric utility subject to the jurisdiction of multiple states to waive or modify the requirements of this section to allow for greater alignment with the regulations of other states.~~

Commented [A3]: Without some sort of accommodation, multi-state utilities like PacifiCorp will likely need to issue an RFP situs to Washington. This will create considerable system management problems and will be costly to Washington customers who would not benefit from PacifiCorp's diverse system.

WAC 480-107-004 Additional requirements.

(1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

WAC 480-107-006 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WAC 480-107-007 Definitions.

"All-source RFP" means an RFP that solicits and accepts bids from any resource capable of meeting all or part of the resource need outlined in its solicitation documents.

"Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

~~"Bid" means a bidder's document containing a description of a project and other information in response to the requirements set forth in a request for proposals.~~

Commented [A4]: please see note at "project proposal" for justification for this change

~~"Bidder" means an individual, association, corporation, or other legal entity that can enter into a contract with the utility to fill a resource need or portion thereof.~~

Commented [A5]: please see note at "project developer" for justification for this change

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Demand response" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Equitable distribution" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Highly impacted community" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Independent evaluator" means a third party, not affiliated with the utility, that provides an assessment of the utility's request for proposal process, evaluation, selection criteria, and related analyses of all project bids ~~and project proposals~~ received in response to a request for proposal.

~~"Independent power producer" means an entity other than a utility, utility subsidiary, or utility affiliate that develops or owns generating facilities or portions thereof that are not qualifying facilities as defined in WAC 480-106-007 (Definitions).~~

Commented [A6]: PacifiCorp recommends deletion of this definition. It is used only once in the rules in a location where it is not strictly necessary. Further, the definition is subsumed within the term "resource supplier." Additionally, "IPP" could inadvertently indicate that an IPP can't supply a conservation/efficiency resource, which is unlikely to be the intent here

"Indicator" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Integrated resource plan" or "IRP" means the filing made by a utility in accordance with WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

~~"Lowest reasonable cost" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].~~

Commented [A7]: This is used throughout the rules and importing from the IRP rules seems efficient

~~"Project developer" means an individual, association, corporation, or other legal entity that can enter into a contract with the utility to fill a resource need or portion thereof.~~

Commented [A8]: PacifiCorp suggests deletion of this definition and replacement with the term with "bidder" in throughout the document. "bidder" could be redefined to use this definition, as was done above

~~"Project proposal" means a project developer's document containing a description of a project and other information in response to the requirements set forth in a request for proposals.~~

Commented [A9]: PacifiCorp suggests deletion of this definition and replacement with the term with "bid" throughout the document. The two terms are equivalent (see definition of "bid."). "Bid" could be redefined to use this definition, as was done above

"Qualifying facilities" has the same meaning as defined by WAC 480-106-007 (Definitions).

"Renewable resource" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

~~"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to an identified near-term resource need in a utility IRP. Facility upgrades that do not meet this standard do not constitute repowering for the purposes of the RFP requirement in WAC 480-107-024. a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routine major maintenance, federal or state regulatory requirements, or replacement of equipment that does not materially affect the physical or economical longevity of the generator or generation facility.~~

Commented [A10]: Please see comments

"Request for proposals" or "RFP" means the documents describing a utility's solicitation of bids for delivering a resource need.

~~"Resource" is any single generating resource, demand response resource, or conservation and efficiency resource.~~

"Resource need" has the same meaning as defined by WAC 480-100-600 (Definitions)[Draft integrated resource planning chapter] .

~~"Resource supplier" means a third-party supplier, utility, or utility affiliate that provides equipment or services that serve a resource need.~~

Commented [A11]: This definition was deleted and replaced with the term "bidder" throughout the draft rule, as the two terms appear equivalent.

~~"Significant Energy Resource" is any generating resource, demand response resource, or conservation and efficiency resource that meets any of the following criteria:~~

~~(a) The acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length;~~

~~(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection part (a) or (c) of this rule;~~

~~(c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:~~

~~(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and~~

~~(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other; or~~

~~(d) As directed by the Commission.~~

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

"Vulnerable population" has the same meaning as defined by WAC 480-100-600 (Definitions) [Draft integrated resource planning chapter].

"Utility" means an electrical company as defined by RCW 80.04.010.

WAC 480-107-010 Required RFPs.

~~(1) (1) Utilities must issue an RFP whenever acquiring a significant energy resource.~~

~~(1) —(2) Utilities must issue an all source one or more RFPs, whenever acquiring a significant energy resource to fill a resource need identified in resulting from an IRP or IRP update.:~~

~~(a) The utility's most recently filed IRP or IRP update demonstrates that the utility has a resource need greater than 80 MW with terms longer than five years in length within four years; or~~

~~(b) The utility's two year IRP update demonstrates a combined new or unfilled resource need greater than 80 MW compared to the utility's most recently filed IRP. Unfilled needs do not include resource needs identified in the utility's four year IRP and which the utility is actively engaged in filling through an RFP at the time a resource need is identified in its two year IRP update.~~

~~(2) For RFPs issued pursuant to subsection (1) of this section, utilities must issue an all source RFP.~~

~~(a) The utility may issue a single-source RFP in conjunction with an all-source RFP required by section (2) if the utility fairly compares all resource options in its combined analysis. If two RFPs are issued in conjunction, bidders may only bid a specific project into a single RFP.~~

~~(b) All-source RFPs required by section (2) must allow resources that provide a subset of the characteristics or attributes of the resource need, including but not limited to unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, regardless of ownership structure, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.~~

~~(3) The requirements of this chapter do not apply to any resource procurement that is not for a significant energy resource. This section does not preclude utilities from soliciting resources outside of the required all source RFPs, including in single source RFPs. If a utility issues an RFP or solicitation that is not required in WAC 480-107-010(1) as described in WAC as described in WAC 480-107-011(3).~~

~~WAC 480-107-011 Applicability of rule sections.~~

~~(1) When a utility issues an RFP pursuant to WAC 480-107-010(1)(a), the RFP must comply with WAC 480-107-001 through WAC 480-107-010, 015, 017, 020, and 023 through 145.~~

~~(2) When a utility issues an RFP pursuant to WAC 480-107-010(1)(b), the RFP must comply with WAC 480-107-001 through 010, 015, 020, and 023 through 145.~~

Commented [A12]: Recommend deletion. Unbundled RECs do not meet the definition of "resource need" under either either the Staff or the Pac proposals. Further unbundled RECs run against the goals of CETA to secure physical renewable resources and should be used only as a short term (5 years or less) stop gap during which the IRP and RFP process can acquire sufficient non-emitting resources.

~~(23) When a utility issues an RFP allowed under WAC 480-107-010(2), the RFPs must comply with WAC 480-107-001 through WAC 480-107-010, 015, 020, and 023 through 145.~~

~~(4) For all other actions by the utility to acquire resources, WAC 480-107-001 through WAC 480-107-007, WAC 480-107-115 and WAC 480-107-125 apply.~~

WAC 480-107-015 Solicitation process for significant energy resource ~~any RFPs~~ to fill IRP or IRP Update resource need.

(1) The provisions of this section apply to any RFP issued for a significant energy resource to fill a resource need identified in an IRP or IRP Update. Utilities are strongly encouraged to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric.

(2) A utility must conduct outreach to potential bidders ~~or resource suppliers~~, including nonprofits and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. Potential bidders must have equitable access to information relevant to responding to a utility's RFP, including but not limited to accommodation required by the Americans with Disabilities Act communications guidance.

(3) A utility must post a copy of the RFP on the utility's public web site and make reasonable efforts to ensure the RFP is known to industry and potential bidders, such as placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.

(4) On a public webpage, the utility must publish information about how interested persons can participate in the utility's RFP process, or follow the utility's RFP work and the approval process for its RFP if required. The utility must publish on the same webpage information for interested persons on how to contact the commission's Records Center to be placed on relevant distribution lists for utility RFPs.

~~(5) The utility must not allow bid contents to be available to its employees, an independent evaluator, or any other entity or person until the expiration of the solicitation period specified in the RFP.~~

~~(56)~~ The utility must allow bids of different types of resources that may have the potential to fill the resource need identified in its RFP including, but not limited to: electrical savings associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities not currently contracted with the utility; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

~~(67)~~ A utility may participate in ~~its~~ the RFP ~~bidding process as a resource supplier~~, or may allow a subsidiary or affiliate to participate in its RFP ~~bidding process as a resource supplier~~, pursuant to requirements described in WAC 480-107-024 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate), and WAC 480-107-0230 (Independent evaluator for large-significant resource need or utility or affiliate bid).

Commented [A13]: This section is specific to "Required RFPs," so it should not apply to this type.

Commented [A14]: These rules should not apply to other acquisitions outside the RFP process. The only significant requirement in these rules pertinent to non-RFP acquisitions is WAC 480-107-115, pertaining to system emergencies. Most of these issues are typically addressed by contract, as the rules allow. Others are primarily matters of federal law, also as noted in the rules.

To the extent that the Commission believes that 480-107-115 should be retained and apply to all acquisitions, such a requirement could be more cleanly included in the text of that rule, instead of in this section.

Commented [A15]: Please clarify the definition of "solicitation period." Are IEs allowed to be copied on RFP bid responses, even if the bids are received before the due date? Or are IEs prohibited from viewing contents through the bid due date? PacifiCorp's current IE process in Oregon and Utah require that the IEs be copied on all bids submitted by bidders at the time of submittal. From RFP release through final award, we do not communicate with bidders without copying the IEs so as to ensure transparency and avoid perception of bidder preference.

~~(7)~~ If demand response may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to respond with a bid, including stacked values of benefits and costs.

~~(8) If the utility is required to retain an independent evaluator under WAC 480-107-023, the utility must publish, on a public webpage, information detailing the independent evaluator process pursuant to WAC 480-107-023, including how interested persons can participate in process.~~

WAC 480-107-017 ~~RFP Filing for Commission review and approval of RFPs for significant energy resource RFPs to fill IRP or IRP Update resource need.~~

~~(1) If a utility's IRP or IRP update shows a resource need for a significant energy resource, For RFPs required under 480-107-010(1)(a), a utility must submit to the commission a proposed RFP and accompanying documentation no later than one hundred twenty days after the utility's IRP is acknowledged due to be filed with the commission.~~

(2) The utility must also provide information on its website detailing the commission approval process required pursuant to subsection (1) of this section, including draft RFP submission to the commission and the subsequent public comment period, or independent evaluator process pursuant to WAC 480-107-023.

(3) Within forty-five days after the RFP's filing date, interested persons may submit written comments to the commission on the RFP.

(4) The commission will approve, approve with conditions, or suspend the RFP, including the procedures and criteria the utility will use to evaluate and rank ~~bids/project proposals~~ in accordance with WAC 480-107-035, within thirty days after the close of the comment period.

(5) ~~A~~—A utility may solicit bids for resource need within thirty days of a commission order approving the RFP, with or without conditions, as applicable.

WAC 480-107-020 ~~Informational filing requirement~~ Requirements for all other RFPs

~~(1) A—A utility must submit to the Commission any RFPs not discussed in WAC 480-107-015 required under WAC 480-107-010(1)(b) as well as accompanying documentation no later than one hundred twenty days after the utility's IRP update is due to be filed acknowledged by with the commission.~~

~~(2) —A utility must submit to the commission any RFP allowed under 480-107-010(3) and accompanying documentation 30 days prior to the RFP's start date for accepting bids.~~

(2) A utility must conduct outreach to potential bidders, including nonprofits and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. Potential bidders must have equitable access to information relevant to responding to a utility's RFP, including but not limited to accommodation required by the Americans with Disabilities Act communications guidance.

(3) A utility must post a copy of the RFP on the utility's public web site and make reasonable efforts to ensure the RFP is known to industry and potential bidders, such as placing notices in relevant industry

Commented [A16]: This rule is vague and does not define what "sufficiently detailed information" is for the utility to comply with, nor what the definition of "stacked values of benefits and costs" is. PacifiCorp recommends revision or deletion.

Commented [A17]: PacifiCorp requests clarification regarding what process this is. It may be easier to move this requirement to -023, as it would seem to apply to all RFPs that use an IE

Commented [A18]: It is counterproductive and potentially inefficient for a utility to issue an RFP for a Resource Need when that Resource Need has not been finalized and is at risk of being subject to change or conditions. We appreciate Staff's desire to tie the RFP development to filing, but it is more appropriate and more efficient to tie to acknowledgement.

publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.

(4) On a public webpage, the utility must publish information about how interested persons can participate in the utility's RFP process, or follow the utility's RFP work and the approval process for its RFP if required. The utility must publish on the same webpage information for interested persons on how to contact the commission's Records Center to be placed on relevant distribution lists for utility RFPs.

(57) A utility may participate in the RFP, or may allow a subsidiary or affiliate to participate in its RFP, pursuant to requirements described in WAC 480-107-024 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate), and WAC 480-107-023 (Independent evaluator for large significant resource need or utility or affiliate bid).

~~(683)~~ If the utility is required to retain an independent evaluator under WAC 480-107-023, the utility must publish, on a public webpage, information detailing the independent evaluator process pursuant to WAC 480-107-023, including how interested persons can participate in process.

WAC 480-107-023 Independent evaluator for large significant energy resource need or utility or affiliate bid.

(1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility, its subsidiary, or affiliate participates in the utility's RFP bidding process, which may result in the utility owning or having a purchase option in the resource over its expected useful life; or

(b) The RFP is for a significant energy resource. The utility is considering repowering its existing resources to meet the resource need identified in its RFP.

(2) The utility, after consulting with commission staff and stakeholders, ~~may~~must issue a solicitation for an independent evaluator and must recommend an independent evaluator for approval by the commission.

(3) The independent evaluator will contract with and be paid by the utility. The utility will also manage the contract terms with the independent evaluator. The utility may request recovery of fees and expenses associated with engaging an independent evaluator in customer rates if RFP bid fees are inadequate to cover such costs.

(4) The utility must provide the independent evaluator with all data and information necessary to perform a thorough examination of the ~~the~~ bidding process and responsive projects.

(5) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly, transparently, and properly, and within the Commission's rules;

Commented [A19]: PacifiCorp requests clarification regarding what process this is. It may be easier to move this requirement to -023, as it would seem to apply to all RFPs that use an IE

Commented [A20]: This should not be a standalone reason to require an IE. If, for example, a utility is considering 20 MW of wind turbines, that should not trigger an IE requirement for the same reasons discussed above.

-(b) Participate in the design of the solicitation;

(c) Evaluate the unique risks, burdens, and benefits of each bid;

(d) Provide to the Company Commission the independent evaluator's minutes of meetings and the full text of written communications between the independent evaluator and the utility and any third-party related to the independent evaluator's execution of its duties;

(e) Verify that the utility's inputs and assumptions, including capacity factors and capital costs, are reasonable including but not limited to:

(i) Terminal value methods and assumptions;

(ii) Environmental emissions costs;

(iii) Reasonableness of capital costs;

(iv) Adequacy of capital additions costs;

(v) Reasonableness of all operation and maintenance costs;

(vi) Reasonableness of performance assumptions for output, heat rate, and power curve (as applicable);

(vii) Risk assessment of construction schedules or an assessment of risk associated with construction schedule delays;

-(f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;

(g) Independently score utility, subsidiary and utility affiliate bids as well as bids with ownership characteristics or options, if any, and all or a sample of the remaining bids.

(h) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(4) that must:

(i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and bidders; and

(ii) Explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences.

(6) The commission may request that additional analysis be included in the final report.

(7) Interested persons may file comments on the final report filed with the commission, including concerns about routine processes, such as administrative corrections or recommending removal of bids that do not comply with the minimum criteria identified in the RFP, but no stakeholder, including the utility or commission staff, shall have any editorial control over the independent evaluator's final report.

WAC 480-107-024 Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate.

Commented [A21]: This is unclear and implies that the IE will consider facts/criteria not included in the RFP's evaluation rubric. PacifiCorp requests clarification or deletion

Commented [A22]: It would be unreasonable to expect the IE to independently score *all* bids. Utility RFPs frequently have hundreds of bids and take weeks to process, with an entire origination or resource acquisition group assessing them. An IE is unlikely to have the resources to do the same.

Requiring scoring of all utility/affiliate/potential ownership bids, as well as a subset of remaining bids, ensures accuracy and fairness without an unreasonable burden

(1) The utility, its subsidiary, or affiliate may participate in the utility's RFP bidding process and the utility may accept bids that will result in the utility owning or having a purchase option in the resource over its expected useful life. ~~The utility may also consider repowering its existing resources to meet the resource need identified in its RFP. If any one of these circumstances is to occur:~~

Commented [A23]: Please see comments for explanation.

~~(a) The solicitation and bidding process of the RFP will be subject to additional scrutiny by the commission and an independent evaluator, pursuant to WAC 480-107-023 (Independent evaluator for large resource need or utility or affiliate bid), to ensure that no unfair advantage occurs; and~~

Commented [A24]: This section is vague. Requiring an IE for all RFPs that allow for utility bids is sufficient to mitigate whatever risk of unfairness exists.

~~(b) The utility must provide notice of such circumstances at the time of its RFP filing or issuance and as part of its RFP. As part of the notice, the utility must describe how it will ensure that the utility, utility's subsidiary, or affiliate bids will not have an unfair advantage over other bids.~~

Commented [A25]: The requirement of an IE is how a utility mitigates this risk, to the extent it exists. Further, the requirement in (3) also eliminates the risk

~~(2) In the case of the utility considering repowering a resource in 480-107-024(1) it must submit its repowering project as a bid in the RFP.~~

Commented [A26]: See comments

~~(23)~~ A utility must not disclose the contents or results of an RFP or competing bids project proposals to its own personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to such information being made public. The utility must include in the RFP and notice the methods used to assure that information is controlled and not communicated to its own personnel involved in developing any bid under WAC 480-107-024(1).

WAC 480-107-025 Contents of Significant Energy Resource RFP solicitations.

(1) An RFP for a Significant Energy Resource must define the resource need, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, time and locational attributes, operational attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-610(13) (Content of an Integrated Resource Plan) [Draft].

(2) The RFP must request information identifying energy and non-energy benefits or burdens to highly impacted communities and vulnerable populations, short-term and long-term public health impacts, environmental impacts, resiliency and energy security impacts, or other information that may be relevant to identifying the costs and benefits of each bid such as a bidder's past performance utilizing diverse businesses. After the approval of the utility's first Clean Energy Implementation Plan requested information must include, at a minimum, information related to indicators approved in the utility's most recent Clean Energy Implementation Plan, including descriptions of the indicators.

Commented [A27]: These items remain vague and ambiguous and therefore difficult to measure within the context of regulatory procurement "rules." Is there a way for Staff to defer rules until Equity group has finalized their work?
"Measurable" and "objective" criteria will insure rule compliance and better alignment with the CETA goals. Further, measurable and objective criteria can be compared and graded in the evaluation process.

(3) The RFP must document that the size and operational attributes of the resource need requested are consistent with the range of estimated new resource need identified in the utility's IRP, IRP update, as applicable.

(4) The RFP must explain the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 (Project ranking procedure). The RFP must include a sample evaluation rubric that quantifies, where possible, the weight each criterion will be given during the project ranking procedure and provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority. The RFP must also specify any

minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the ranking procedure.

(5) The RFP must specify a detailed timeline for each stage of the RFP process including those for solicitation, ranking, and selection as well as the utility's schedule of planned informational activities and contact information for potential bidders.

(6) The RFP must identify all financial security requirements and the rationale for such requirements.

~~(7) Upon request from a bidder, the utility must consider whether to provide utility-owned assets for use by bidders. The RFP must generally identify whether any utility-owned assets, including merchant side assets, that will be made available by the utility to be used by bidders to assist in meeting the resource need at the lowest reasonable cost. If following the request, the utility deems it feasible to make the requested asset available, the utility will make reasonable efforts to provide necessary technical details to all bidders related to those as requested from bidders and allow the use of such assets upon request. The bidder will be responsible for providing proposing the terms, conditions and pricing associated with the use of utility-owned resources that are offered and made available for use of such assets to be included in in as part of third-party bids. The utility will receive appropriate compensation for such utility-owned resources used by bidders. to be included in bids.~~

Commented [A28]: See comments

~~(8) All RFPs must clearly state the scope of its solicitation and the types of bids in WAC 480-107-024(1) the RFP will accept.~~

~~(8) The RFP must identify any minimum bidder requirements, including for financial security requirements and the rationale for such requirements, such as proof of a bidder's industry experience and capabilities.~~

~~(9b) The RFP must include standard form contracts to be used in acquisition of resources.~~

~~(109) (h) All RFPs must discuss the impact of any applicable multi-state regulation on RFP development, including the requirements imposed by other states for the RFP process.~~

Commented [A29]: Addition from OAR 860-089-0250(3)(h). PacifiCorp suggests this addition to allow stakeholders to understand how a multi-state utility's different jurisdictional requirements have shaped development of the RFP

~~(10) If the utility will accept bids from the utility, its subsidiary, or an affiliate that could result in the utility owning or having a purchase option in the resource over its expected useful life, the utility must provide notice of such circumstances at the time of its RFP filing or issuance and as part of its RFP. A utility must not disclose the contents or results of an RFP or competing bids to its own personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to such information being made public. The utility must include in the RFP and notice the methods used to assure that information is controlled and not communicated to its own personnel involved in developing any bid under WAC 480-107-024(1).~~

Commented [A30]: The requirement of an IE is how a utility mitigates this risk, to the extent it exists. Further, the requirement in (3) also eliminates the risk

WAC 480-107-035 Project ranking procedure.

(1) At a minimum, a utility's RFP ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference, and requirements adopted by Washington state or the federal government. The

ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities. The ranking, criteria must also be consistent with the avoided cost methodology developed in the IRP the utility uses to support its determination of its resource need. ~~The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.~~

(3) ~~In choosing to remove a project bid during any stage of its evaluation process the utility may not base its decision, solely, on the project's ability to only meet a portion of the resource need.~~ The utility must not discriminate based on ownership structure.

(4) The utility and, as applicable, the independent evaluator will each score and produce a ranking of the qualifying bids following the RFP ranking criteria and methodology. If, as a result of unexpected content in the bids, the utility deems it necessary to modify the ranking criteria, the utility must notify all bidders of the change, describe the change and provide an opportunity for bidders to subsequently modify submitted bids.

~~(5) Within ten days after the close of the bidding period for bidsproject proposals, the utility must make available for public inspection on the utility's website a summary of each project. Where use of confidential data prohibits the utility from identifying specifics of a project, a generic but complete description is sufficient.~~

(6) The utility may reject any ~~bidsproject proposals~~ that do not comply with the minimum requirements within the RFP or, as part of the bid, do not identify the costs of complying with environmental, public health, or other laws, rules, and regulations in effect at the time of the bid.

(7) Within ~~twentyforty~~ days after executing an agreement for acquisition of a resource the utility must file the executed agreement and related documents with the commission.

(8) The commission may review any acquisitions resulting from the RFP process in the utility's relevant general rate case or other cost recovery proceeding.

(9) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayers' interests together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.

WAC 480-107-045 Pricing and contracting procedures.

(1) Once ~~bidsproject proposals~~ are ranked in accordance with WAC 480-107-035 (Project ranking procedure), the utility must identify the bidders that best meet the selection criteria and that are expected to produce the relevant attributes as defined by that portion of the resource need to which the ~~bidsproject proposal~~ is directed.

(2) The ~~bidproject proposal~~'s price, pricing structure, and terms are subject to negotiation.

WAC 480-107-065 Acquisition of conservation and efficiency resources.

(1) A conservation and efficiency ~~resource supplierbidder~~ may participate in the bidding process for any resource need. A utility, a utility subsidiary, or affiliate may participate as a conservation supplier subject

Commented [A31]: This is too ambiguous to administer. It asks utilities to rank bids on unpublished criteria. PacifiCorp requests either clarification and revision or removal.

Commented [A32]: PacifiCorp would appreciate clarification and examples regarding the intent of this section.

Commented [A33]: Please see comments

Commented [A34]: This is 10 days longer than Oregon's 30 days. PacifiCorp expects that the new equity and environmental justice sections of CETA will add some time to final negotiations

to the conditions described in WAC 480-107-024 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate).

(2) All conservation and efficiency measures included in a ~~bid project proposal~~ must be expected to produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement ~~process as described in this rule unless implementing a competitive procurement~~ framework for conservation and efficiency resources as approved by the commission, or pursuant to WAC 480-107-001.

(a) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110 (Conservation advisory group). The first competitive procurement framework for conservation and efficiency resources may be filed with the 2022-2024 biennial conservation plan.

(b) The competitive procurement framework for conservation and efficiency resources must:

(i) Define the specific criteria that will be used to determine the frequency of competitively bidding conservation and efficiency resource programs or parts of a program;

(ii) Address appropriate public participation, outreach, and communication of evaluation and selection criteria;

~~(iii) Enhance or, at minimum, not interfere with the adaptive management of programs;~~

(iv) Include documentation of support by the advisory group; and

(v) Be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 (Conservation planning and reporting).

(c) The competitive procurement framework for conservation and efficiency resources may:

(i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and

(ii) Consider if and when to use an independent evaluator.

WAC 480-107-075 Contract finalization.

(1) ~~Unless otherwise prohibited by law, a~~ utility may decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any project bidder and utility may negotiate changes to the selected ~~bid project proposal~~, subject to any limitation established in the RFP, for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

Commented [A35]: Please see comments. Conservation and efficiency should not be at a disadvantage in procurements outside an RFP framework

Commented [A36]: As expressed in PacifiCorp's comments to the IRP rules 480-109, "Adaptive management" is too broad and ambiguous, therefore, recommend deleting this provision to the procurement rules.

Commented [A37]: Delete extra line

Commented [A38]: It is not clear when this decision would be "prohibited by law."

(3) The utility may sign contracts for any appropriate period specified in a selected ~~bidproject-proposal~~ for up to a ~~twenty-thirty~~ years. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(4) Any contract signed by the utility to fill a resource need in any utility action to acquire resources must require the firm awarded the contract to track and report to the utility its utilization of diverse businesses, including but not limited to women-, minority-, disabled-, and veteran-owned businesses. The commission may require the utility to provide this information per WAC 480-107-145.

(5) If material changes are made to the ~~bidproject-proposal~~ after project ranking, including material price changes, the utility must suspend contract finalization with that bidder and rerank, and have the independent evaluator rerank when applicable, projects according to the revised ~~bidproject-proposal~~. If the material changes cause the revised ~~bidproject-proposal~~ to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.

WAC 480-107-115 System emergencies.

(1) A generating facility entering into a power contract under these rules must provide energy or capacity to a utility during a system emergency only to the extent:

- (a) Provided by agreement between such generating facility and utility; or
- (b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a utility may discontinue or curtail:

- (a) Purchases from a generating facility if such purchases would contribute to such emergency; and
- (b) Sales to a generating facility, if such discontinuance or curtailment:

- (i) Does not discriminate against a generating facility; and
- (ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.

~~WAC 480-107-125 Interconnection costs.~~

~~(1) Any costs of interconnection are the responsibility of the owner or operator of the generating facility entering into a power contract under this chapter. The utility must assess all reasonable interconnection and necessary system or network upgrade costs the utility incurs against a generating facility on a nondiscriminatory basis.~~

~~(2) The owner or operator of the generating facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement shall be made, at the utility's election:~~

~~(a) At the time the utility invoices the owner or operator of the generating facility for interconnection costs incurred by the utility; or~~

Commented [A39]: Thirty years allows for bidders to offer more competitive PPA bids that value the economic life of the assets being bid. In short, a PPA with a max 20 year term, may or may not evaluate as well as a BTA given i) the application of tax credits and ii) assumed asset lives. The depreciable life of a wind asset can be as long as 30 years and solar is typically assumed to be 25-30 years now that there are solar module suppliers now offering 30-year warranties. In that shareholder value is derived from the deployment of capital, a shorter allowable term may provide an advantage to a BTA or even a self-build opportunity. In PacifiCorp's latest RFP, it was recommended by stakeholders to extend the allowable term to 30 years.

~~(b) Over an agreed period of time not greater than the length of any contract between the utility and the generating facility;~~

WAC 480-107-145 Filings—Investigations.

(1) The commission retains the right to examine ~~project proposal~~ bids as originally submitted to the RFP by ~~potential developers~~ bidders. The utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's general rate case in which the fully-developed project was reviewed for prudence, including any time period allowed for reconsideration or appeal, whichever is later.

(2) The utility must file with the commission within 90 days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

- (a) Specific reasons for any project rejected under WAC 480-107-035(6);
- (b) Number of bids received, categorized by technology type;
- (c) Size of bids received, categorized by technology type;
- (d) Number of projects received, categorized by technology type;
- (e) Size of projects received, categorized by technology type;
- (f) Median and average bid price, categorized by technology type. Categorization should be broad enough to limit the need for confidential designation whenever possible;
- (g) Number of bids received by location, including locations designated as highly impacted communities;
- (h) Number of bids received and accepted by bidder type, including women-, minority-, disabled-, or veteran-owned businesses;
- (i) Number of projects received, categorized by ownership structures; and
- (j) Number of projects using labor standards identified in RCW 82.08.962 and RCW 82.12.962.

WAC 480-107-BBB Protected Information.

(1) The utility may request a protective order be issued prior to making available protected information required to be shared under the rules in this chapter. Protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, the independent evaluator, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in any of the procedures outlined in this chapter including any RFP review or approval, investigation, or cost-recovery proceedings.

Commented [A40]: Consistent with PacifiCorp's June 29 comments, this section addresses a matter of exclusive federal jurisdiction (non-PURPA interconnection costs). Accordingly, the state lacks the authority to regulate the allocation of these costs. The section should be deleted to recognize the state's proper jurisdictional reach.

Commented [A41]: "potential developers" is not a defined term

Commented [A42]: PacifiCorp strongly recommends addition of a section allowing for protective orders in these dockets. Protective orders are common in the other states where PacifiCorp routinely has dockets assessing RFPs open.

Without a PO in place, parties will not be able to access critical, but confidential data. Further, if bidders are not assured that their projects will remain confidential, there may be less interest in bidding.